

Rutland County Council

Arboricultural Services Contract

Special Conditions of Contract

Special Conditions – Part I

INSPECTION OF LOCATIONS, EXTENT AND NATURE OF SERVICES

- (1) The Contractor shall be deemed to have fully acquainted himself with all conditions likely to affect the performance of the Services and have visited sufficient representative Locations to satisfy himself with the nature and extent of the Services to be undertaken as detailed in the Contract Documents and as to the nature of access, parking, local conditions, site conditions and restrictions, surrounding hazards including all services, risks, contingencies and all other matters and circumstances likely to affect the performance of the Services.
- (2) Where any part of the Services necessitates entry onto adjoining lands, or the disconnection and/or reconnection of any overhead or underground wires, cables, pipes or other services, or like matters, the Contractor shall be responsible at his cost after first obtaining the approval of the Council Manager so to do for obtaining all appropriate consents and making all the necessary arrangements with the relevant third parties and/or government agencies and for any works of reinstatement or repair of damage necessitated by the performance of the Services.
- (3) The Council will tend to assume responsibility for contacting residents who may be affected by any planned Arboricultural works prior to those works commencing. However, where necessary, the Contractor may be required to distribute letters on behalf of the Council. The letters must be distributed to the properties, by hand or by post or by any other suitable means, to arrive by a date specified by the Council. The cost of distributing these letters will be met by the contractor.

PRICE SUFFICIENCY

- (1) The Contractor must have satisfied themselves as to the correctness and sufficiency of the rates and prices included in their Pricing Schedule which shall (except insofar as is otherwise provided in the Contract) cover all their obligations under the Contract.
- (2) No claim by the Contractor for additional payment shall be allowed on the grounds of any misunderstanding or misinterpretation due to lack of knowledge of the conditions, regulations or requirements for performing the Services.

PERFORMANCE OF THE SERVICES

- (1) During the Contract Period the Contractor shall perform the Services in a proper skilful and workmanlike manner in accordance with the current accepted practices and methods used in undertaking good forestry and

Arboricultural work and to the entire satisfaction of the Council Manager.

- (2) The Contractor shall provide at his own cost all off-site premises and facilities as are necessary for the proper performance of the Services.
- (3) The Contractor shall at all times during the Contract Period allow the Council Manager and such persons as may from time to time be nominated by the Council Manager access to:
 - (a) all Locations for the purpose of inspecting Works being performed pursuant to the Contract
 - (b) all Locations for the purpose of inspecting records and documents in the possession of the Contractor in connection with the performance of such Works
 - (c) Materials and Plant in order to ensure that such items comply with manufacturers' specifications and have been obtained, where so required under the Contract, from approved suppliers
 - (d) any employee or agent of the Contractor for the purpose of interviewing him/her/them in connection with the carrying out of all or any part of the Services
 - (e) all off-site premises and facilities provided by the Contractor.
- (4) The Contractor shall not use any of the Locations to perform, either on his own behalf, or on behalf of any person other than the Council, any work other than provided for in the Contract without the prior consent of the Council Manager.
- (5) The Contractor shall, throughout the Contract Period, but only to the extent of its obligations in the Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

MODE AND MANNER OF PERFORMANCE

- (1) If the Contractor encounters any points of doubt or difficulty during the course of the performance of the Services, especially with regard to different or additional Works which appear to be necessary at any Location, matters of safety, required method or work practice, damage or points not covered by the Contract, the Contractor will clear the matter with the Council Manager before proceeding with the Works, and the Contractor shall not make any agreements or arrangements with unauthorised persons.

- (2) If the Contractor at any time becomes aware of any act or omission or proposed act or omission by the Council which prevents or hinders or may prevent or hinder the Contractor from providing the Services in accordance with the terms of this Contract, the Contractor shall immediately inform the Council Manager. The provision of such information under this sub-clause shall not in any way release or excuse the Contractor from any of the Contractor's obligations under this Contract.
- (3) The Contractor shall report each month, or as requested, to the Council Manager on works in progress, planned works and any other relevant matters. Such reports will normally be verbal or in writing as requested.
- (4) Upon commencement of Works at any Location, the Contractor shall arrange for work to proceed during appropriate conditions and seasons without interruption unless his instructions from the Council Manager require otherwise.

METHOD STATEMENT AND PROGRAMME OF WORK

- (1) The Council Manager will identify at appropriate intervals throughout the Contract Period the actual Works to be carried out by the Contractor at any Location and issue appropriate instructions to the Contractor, which shall always be confirmed in writing even if they are initially given verbally whilst meeting the Contractor at any Location. The Contractor shall go to the specified Location and carry out within the specified time the required Works in accordance with such written instructions.
- (2) If required by the Council Manager the Contractor shall, throughout the Contract Period, provide the following detailed information to the Council Manager
 - (i) a programme of Works giving such details as Work Instruction, Locations, Works, estimated size of workforce etc. Such a programme shall include the re-commencement of Works at any Location and shall be submitted to the Council Manager a calendar week in advance or as appropriate ; and
 - (ii) confirmation by telephone or email, as required, to the Council Manager as to where Works are being carried out

ACCIDENT REPORTING

- (1) The Contractor shall report to the Council Manager all reportable incidents involving injury to persons or other dangerous occurrence, damage to property, any contravention of any law any breach or alleged breach of contract, all items requiring repair, and all damages and all losses occurring at the Locations and to any property of the

Council during the performance of the Services. The reporting shall take place immediately after such occurrence becomes evident or within 24 hours of the occurrence, and within a further period of 24 hours the Contractor shall provide the Council Manager with a written report on the incident or matter unless the Council Manager indicates otherwise.

RECORD KEEPING

- (2) The Contractor shall maintain current and accurate records of all Works carried out in the provision of the Services which shall include full details of all Materials used at each Location. These records shall be open for inspection by the Council Manager at all reasonable times.
- (3) The Contractor shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including the Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request afford the Council, the Council's representatives or any auditors reviewing matters relating to the Contract such access to those records as may be required by the Council in connection with the Contract.

EMERGENCY WORKS

- (1) In the event of a major incident, the Contractor may be required to provide tree surgery and/or general forestry operatives as soon as is practicable after receiving a request from the Council Manager to deal with the emergency works (the "Emergency Works").
- (2) The Contractor must provide the Council Manager with a valid contact phone number for emergency purposes.

WORKFORCE

- (1) The Contractor shall at all times during the Contract Period employ sufficient persons and supervisors for the proper performance of the Services in accordance with the Contract Documents and approved programmes, of which the Contractor shall have sufficient copies readily available at all times, and the Contractor shall ensure that every person so employed is at all times properly and sufficiently qualified, competent, careful, skilled, honest, experienced and instructed as the case may be with regard to the Services and in particular:
 - (a) the task or tasks such person has to perform including but not limited to the safe operation of relevant Plant and equipment in the approved manner;

- (b) all relevant provisions of the Contract;
 - (c) all relevant policies, rules, procedures and standards of the Council;
 - (d) fire risks and fire precautions;
 - (e) the need to maintain the highest standards of courtesy and consideration at all times;
 - (f) the need to recognise situations which may involve any actual or potential danger of personal injury to any person or risk to property at the Location and where possible without personal risk to make safe such situations and to report such situations to the Council Manager or in the event of an emergency to the member of the Employers staff with responsibility for the Location; and
 - (g) the ability to interpret and work from drawings, plans, verbal and written instructions, and to understand forestry and arboricultural terminology
- (2) The Contractor shall at all times during the Contract Period employ an adequate number of persons with sufficient abilities and skills to manage and supervise the performance of the Services in a proper and continuous manner.
 - (3) Such persons shall have adequate knowledge of the operations to be carried out including the methods and techniques required the hazards likely to be encountered, and the method of preventing accidents and safeguarding the public and adjacent property at any location in accordance with the Contract.
 - (4) The Contractor shall appoint a competent and experienced person who will be in full charge of the performance of the Services and also a competent and experienced deputy when the said person is not available.
 - (5) The names of the persons appointed shall be notified in writing to the Council Manager. The work base of such persons shall be within a reasonable distance of the Locations where Works are to be carried out so that they are readily available during the normal working hours of the Council and also during the performance of the Services under the Contract or at such other times as may be specified by the Council Manager and shall give such time as the Council Manager requires to supervise the specified services.
 - (6) The Contractor shall ensure that such persons can be contacted at any time during the working day. The Contractor shall ensure that the appointed person, or a competent deputy duly authorised to act on their behalf, is present at each Location and available to the Council

Manager at all times when any employee of the Contractor is on duty at the Location.

- (7) The Contractor shall at all times take all such precautions as are necessary to protect the health and safety of all persons employed and shall comply with the requirements of the Health and Safety at Work etc. Act 1974 (and any amendments or re-enactments thereof) and of any other Acts Regulations or Orders pertaining to the health or safety of employed persons.
- (8) The Council Manager shall at his absolute discretion be entitled to require the Contractor by notice in writing to remove from the performance of the Services any employee of the Contractor who in the opinion of the Council Manager misconducts himself or is incompetent or negligent in the performance of his duties or fails to conform with any particular provisions with regard to health or safety specified in such notice. The Council shall in no circumstances be liable either to the Contractor or to the employee in respect of any liability, loss or damage occasioned by such removal and the Contractor shall on demand fully and promptly indemnify the Employer against any claim made by such employee.
- (9) The Contractor shall if requested provide to the Council Manager such evidence as he may require of the suitability of any of the Contractor's employees to undertake specific types of work forming part of the Services.
- (10) Employees of the Contractor shall carry at all times photographic identity cards in a form approved by the Council Manager and make such cards available for inspection on request by any employee of the Council. The provision of such cards shall be the responsibility of the Contractor.
- (11) When requested to do so or when communicating with other persons as representatives of the Contractor in performing the Services, employees of the Contractor shall be required to disclose their identity.
- (12) The Contractor's staff engaged in the provision of the Services shall primarily be under the control and direction of the Contractor's own supervisory staff but shall nevertheless while on any Locations act upon instructions given to them by the Council' management staff in any matter in which the immediate health and safety needs of any person or risk of damage to property shall be involved.
- (13) The Contractor shall ensure that his employees perform their duties in an orderly manner and in as quiet and tidy a manner as may reasonably be practicable having regard to the nature of the duties being performed by them.

- (14) All monies or other items of value found at any Location by the Contractor or his employees must be handed to the Council Manager as soon as possible and a receipt or acknowledgement obtained.

PLANT

- (1) The Contractor shall at all times during the Contract Period provide and maintain all such Plant as is necessary for the proper performance of the Services.
- (2) The Council Manager may instruct the Contractor to cease using any inadequate or unsafe Plant forthwith. The Council shall in no circumstances be liable either to the Contractor or any third party in respect of any liability, loss or damage occasioned by such notice and the Contractor shall fully indemnify the Council against any claim.
- (5) The Contractor shall at his own expense keep all Plant employed in the performance of the Services at all times in good and serviceable repair and in such condition as is commensurate with the proper performance by the Contractor of his obligations under the Contract.
- (6) The Contractor's Plant shall bear such words devices or insignia as the Service Manager may require or approve and in addition shall be painted in such colours as the Council Manager may approve. No Plant shall bear any advertising matter of any sort other than the Contractor's or hirer's name and logo without the prior written consent of the Council Manager.
- (7) Vehicles used on the Contract shall comply with the relevant construction and use regulations and be of a design which is entirely suitable for the performance of the Contract. The Contractor shall ensure that he has an adequate level of reserve vehicles available to him at all times as lack of suitable vehicles will not be considered as a reason for non-performance of the requirements of the Contract.
- (8) Not used
- (9) All vehicles and other towed or self-propelled Plant used by the Contractor in the performance of the Services shall have, fixed on the back, signs reading "Highway Maintenance" when working on any road. In each case, the lettering shall be 150mm high for lorries, 100mm high for light vans, cars and other relevant Plant and shall be black on a yellow background. The signs shall be fixed in a prominent position clearly visible from behind the vehicle or item of Plant and shall be maintained in a clean and clear condition. In addition, all vehicles and self-propelled Plant working on any road shall be equipped with a 55 watt minimum power rotating amber beacon or similar approved by the Service Manager properly fixed in a prominent position and clearly

visible from the front and rear of the vehicles, which shall be switched on:-

- (a) wherever it is necessary for vehicles to stand on trafficked carriageways.
 - (b) prior to manoeuvring into or out of a traffic control area.
- (10) All Plant shall be properly suppressed at all times in order to prevent interference with the reception of radio and television transmissions.

PLANT OPERATION AND USE

- (1) The Contractor will ensure that:
 - (a) operators who are responsible for the operation and use of Plant are trained and thoroughly competent in its safe use and operate all Plant safely and correctly at all times in accordance with statutory regulations and instructions of the Contractor;
 - (b) Plant operations are carried out in as reasonable and quiet manner as may be practicable and without causing unreasonable obstruction, danger or annoyance to the public, or residents of a property and any unavoidable obstructions shall be removed immediately the relevant Plant operation has been completed;
 - (c) that no Plant is left unattended without reasonable cause in any area where it is likely to create a nuisance, danger or annoyance to the public or other persons; and
 - (d) that all Plant is fully insured.
- (2) The Contractor shall not use Plant of a type not specified in or agreed under the provisions of the Contract documents without the prior written approval of the Council Manager.
- (3) No Plant shall be stored on or left at the end of the working day on any Location unless the Contractor has obtained the prior approval of the Council Manager.
- (4) All Plant used by the Contractor shall comply with the latest relevant British Standard Specification or equivalent standard of another Member State of the European Community where such exists and be used in accordance with the manufacturer's instructions and the Contractor shall upon request furnish the Council Manager with evidence to prove that any such Plant complies with this condition.

MATERIALS

- (1) Before first planting or using any Materials in the performance of the Services, the Contractor will provide to the Council Manager any such details as he may reasonably require regarding the supplier, the product and the recommended usage and application and shall provide at his cost representative samples of the Materials proposed to be used whenever requested by the Council Manager throughout the Contract Period. All such Materials shall comply with the latest British Standard specification where such exists and the Contractor shall upon request furnish the Council Manager with evidence to prove that any such Materials comply with this condition. Materials will only be used in accordance with the manufacturer's recommendations and shall not be used otherwise without the consent of the Council Manager.
- (2) All Materials shall be used and stored by the Contractor in compliance with any statutory regulations in force during the Contract Period.
- (3) All Materials for the purposes of the Contract must be stored by the Contractor at all times in a secure manner and where hazardous materials are involved shall be kept in their original containers, and the Contractor shall comply in all respects and at all times with the Control of Substances Hazardous to Health Regulations 1988.
- (4) No hazardous or inflammable Materials or pesticides shall be left unattended by the Contractor at any Location for any length of time whatsoever, and no other Materials shall be so left without the prior approval of the Council Manager.
- (5) The Contractor shall supply all Materials required for the performance of the Services unless otherwise stipulated by the Council Manager.
- (6) Where alternative Materials are permitted, the Contractor shall obtain the approval of the Council Manager for use of the alternative before its use.
- (7) Aerosol sprays used in the performance of the Services shall be C.F.C. free.
- (8) Whenever so required by the Council Manager, the Contractor shall substantiate at his own cost and to the satisfaction of the Council Manager that any Materials are in accordance with the relevant specifications and from the approved suppliers.
- (9) The Council reserves the right for the Council Manager to change, wholly or partially, the specification of any material which the Contractor is required to provide under the terms of the Contract. .

HEALTH AND SAFETY

- (1) The Contractor shall comply in all respects with the Health and Safety at Work etc. Act 1974 and as amended and all other statutory requirements relating to the safe execution of the Works.
- (2) The Contractor shall make adequate arrangements for contacting the Police, Fire and Ambulance services and statutory undertakers (or their agents) in case of emergency at any Location.
- (3) The Contractor shall not allow any of his employees onto any Location whilst under the influence of alcohol or drugs except where the latter are prescribed for medication and are not in medical opinion detrimental to the employee's duties as required by the Contract.
- (4) Where the nature of the works make the wearing of any special protective, clothing and/or footwear necessary or appropriate, the Contractor shall provide and shall require his employees to wear such equipment, clothing and/or footwear.
- (5) The Contractor shall be deemed to be aware of the nature of the Locations included in the Contract and in particular the use of such Locations by children, the elderly and mentally or physically disabled persons. The Contractor shall take all due care to ensure the safety of such people and where the works are of a potentially hazardous nature the site authorities shall be notified and any additional safety measures shall be adopted, as are considered necessary to ensure the safe execution of the works.

AVOIDANCE AND REINSTATEMENT OF DAMAGE

- (1) The Contractor shall take due care at all times to avoid damaging any structures or fittings, trees, shrubs and plants grass other surfaces or other loss of amenity at or adjacent to any Location on which he is working and on neighbouring property. If any such damage occurs the Contractor shall, unless otherwise agreed with the Council Manager, carry out within 24 hours of the damage occurring or the Contractor becoming aware of its occurrence full and adequate reinstatement at the contractor's expense and to the complete satisfaction of the Council Manager or alternatively satisfy the Council Manager that full and adequate compensation has been paid to any third party concerned.
- (2) The Contractor shall provide boards planks and the like as may be necessary to protect existing grassed areas at or adjacent to any Location from damage by any cause whatsoever during the performance of the Services.
- (3) Where ground conditions are unfavourable, the Contractor shall contact the Council Manager to re-schedule works as required.

GIVING NOTICES AND PAYMENT OF FEES

- (1) The Contractor shall give all notices and pay all fees required to be given or paid by any Act of Parliament or any Regulation or Bye-Law of any local or other statutory authority in relation to the performance of the Services and by the rules and regulations of all public bodies and companies whose property or rights are or may be affected in any way by the performance of the Services. The Contractor shall include in his tendered rates for all such fees.
- (2) The Contractor shall ascertain and conform in all respects with the provisions of any general or local Act of Parliament and the Regulations and Bye-Laws of any local or other statutory authority which may be applicable and with such rules and regulations of public bodies and companies as aforesaid and shall keep the Council indemnified against all penalties and liability of every kind for breach of any such Act, Regulation or Bye-law, provided always that:
 - (a) the Contractor shall not be required to indemnify the Council against the consequences of any such breach which is the unavoidable result of complying with the Specification or instructions of the Council Manager; and
 - (b) if the Specification or any instruction of the Council Manager shall at any time be found not to be in conformity with any such Act, Regulation or Bye-law the Council Manager shall issue such instructions including the ordering of a variation as may be necessary to ensure conformity with such Act, Regulation or Bye-law.

NUISANCE AND DAMAGE

- (1) The performance of the Services shall be carried out in a reasonable manner without causing nuisance, damage, disturbance or excessive noise. The Contractor shall indemnify the Council from and against any liability for damages on account of any such nuisance, damage, disturbance or excessive noise, whilst performing the Services and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in regard or in relation to such liability.
- (2) All operations necessary for the purposes of the Contract shall so far as compliance with the requirements of the Contract permits be performed so as not to interfere unnecessarily with the users of any Location or adjacent area and the Contractor shall indemnify the Council in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters.

- (3) The Contractor shall be required to provide all necessary barriers and signs for the proper protection of employees, members of the public and other users of any Property during the performance of the Services.

USE OF LOCATIONS

- (1) The Contractor shall pay all charges in connection with the supply of any water, electricity, or gas used in the performance of the Services.
- (2) The Contractor shall in accordance with the requirements of the Council Manager neither hinder nor impede other contractors employed by the Council and their workmen or the workmen of the Council.

PAYMENTS

MONTHLY STATEMENTS

- (1) The Contractor shall submit to the Council Manager within 14 days of the expiration of each calendar month following the Commencement Date, a separate statement (in a form to be determined by the Council Manager) showing;
 - (a) the valuation of the Services performed in respect of each aspect of the Contract up to the end of that month.
 - (b) the amounts to which the Contractor considers himself entitled in connection with all matters for which provision is made in the Contract.
- (2) The Contractor shall submit such calculations and/or other documentation that the Council Manager may require to verify the amounts included in the Monthly Statements.

ADDITIONS AND DEDUCTIONS

- (1) The Council Manager shall be entitled to amend any Monthly Statement

METHOD OF REVIEW

- (1) The rates contained within the Pricing Schedule shall be fixed for the period of twelve months from the Commencement Date. For the next and subsequent twelve month blocks of the Contract Period the rates shall be amended by a percentage factor calculated using the following indices : -

Civil Engineering Formula - '1990 Series' Index No:1 Labour & Supervision

Civil Engineering Formula - '1990 Series' Index No:2 Plant & Road Vehicles

The Council will calculate the revised rates at the end of each 12 month period of the Contract and submit these to the Contractor. If the Contractor requires clarification of the calculation, such a request shall be made within 14 days. After such period the revised rates will be deemed as accepted and shall be included in all subsequent monthly claims for payment.

ARBITRATION

- (1) All disputes between the parties arising out of or connected with this Contract or the performing of the Services by the Contractor which cannot be resolved by negotiation at an operational level within fourteen (14) days shall be escalated to a senior manager at each organisation who will meet within fourteen (14) days (or such other timeframe as may be agreed) and attempt to resolve the dispute in good faith.
- (2) Where the dispute has not been resolved following the meeting of senior managers pursuant to condition 39(1), it shall be referred to an arbitrator who shall be a fully qualified Member of the Institution of Chartered Foresters or a Fellow of the Arboricultural Association and regularly practising in Forestry and Arboricultural matters including those of a nature similar to those required under the Contract. The arbitrator shall be agreed upon by the parties or in default of such agreement within three weeks of the first such name being proposed in writing by either party to be nominated by the President of the Institute of Chartered Foresters or a person appointed by him, or failing this by the President of the Arboricultural Association.
- (3) The arbitrator shall be entitled to make such decision or award as he thinks just and equitable having regard to the circumstances then existing the cost of such arbitration to follow the event or in the event of neither party succeeding to be apportioned between the parties by the arbitrator in such proportions as he in his absolute discretion thinks fit.
- (4) Any award or decision of such arbitrator shall be final and binding on the parties hereto.

OBSERVANCE OF STATUTORY REQUIREMENTS

- (1) The Contractor shall comply at his cost with all statutory and other provisions to be observed and performed in connection with the Services provided under the Contract and shall indemnify the Council accordingly.

- (2) The Contractor shall take all necessary action to comply with the duty of care imposed by Section 34 of the Environmental Protection Act 1995, so far as that duty applies to him or to persons or to waste under his control in the course of carrying out his Contract.
- (3) The Contractor shall comply with any request by the Council for information and to inspect documents under the control of the Contractor so far as such request is reasonably necessary to enable the Council to satisfy himself that no breach of condition 40(1) above has occurred.
- (4) The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.

BRITISH STANDARDS

- (1) Where an appropriate British Standard specification or British Standard code of practice issued by the British Standards Institution or equivalent standard of another Member State or the European Community is current at the time of tendering, all goods used or supplied and all workmanship shall, as a minimum requirement, be in accordance with that standard, without prejudice to any higher standard required by the Contract.

USE OF MAINS WATER

- (1) The Contractor shall be responsible for making his own arrangement with the Water Authority for obtaining mains water for the Works and he shall comply with all the local conditions regarding the use of water. The Contractor shall agree with the Water Authority the location of all hydrants from which mains water can be abstracted for the Works together with abstraction methods, receiving apparatus, draw-off rates and times and he shall provide constant attendance when water is being drawn-off any hydrant.

PRECAUTIONS AGAINST POLLUTION

- (1) In executing the Works the Contractor shall take all necessary precautions to ensure the efficient protection of all rivers, streams, waterways, lakes and the like against pollution.

- (2) The Contractor shall, when working at any Location, perform the Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

NON-SOLICITATION AND OFFERS OF EMPLOYMENT

- (1) For the duration of the Contract and for a period of 12 months thereafter the Contractor shall not employ or offer employment to any of the Council's staff who have been associated with the procurement and/or the contract management of the Services without the Council's prior approval.

CONDITIONS OF CONTRACT - SPECIAL CONDITIONS – PART II

1. STANDARDS OF WORKMANSHIP

- (1) A high standard of arboricultural workmanship shall be provided by the Contractor at all times having regard to the nature of the Works (particularly tree surgery operations which are irreversible) and the standards required by the Council. The Contractor shall employ only staff competent for this purpose and should make allowance accordingly when submitting his Tender.

2. LIMITATION OF WORKING HOURS

- (1) Works shall be carried out only during periods of reasonable daylight between 7.30 am and 4.30pm pm Monday to Friday inclusive unless the Council Manager agrees or requires otherwise, as with certain tree surgery Works or other such Works which may require to be undertaken outside such hours.
- (2) Any such authorisation or requirement to work outside these hours, or to allow overtime working, shall not give rise to any adjustment of the amount payable by the Council under the Contract unless specifically agreed in writing by the Council Manager.

3. USE OF RADIOS BY EMPLOYEES

- (1) The Contractor shall ensure that radios, tape recorders and similar equipment used by persons for whom the Contractor is responsible do not cause inconvenience or nuisance to the public or to the other occupants of any nearby premises.
- (2) The Contractor shall ensure that no radio, tape recorder or similar equipment is brought onto a Location by persons for whom the Contractor is responsible, which is likely to interfere with any nearby electronic security systems.

4. ADVERTISING

- (1) The Contractor shall not display or permit his own nameboards or advertisements or those of any approved sub-contractor or third party to be displayed at any Location without the prior consent of the Council Manager. The Contractor shall obtain the Council Manager's approval of the type, size, colour and siting of such nameboards or advertisements and those shall be removed by the Contractor immediately upon completion of the Works to which they relate.
- (2) If required by the Council Manager the Contractor will erect at the commencement of Works at any Location, a signboard or signboards

to be provided by the Council Manager. Such signboard will indicate that the Works are being carried out by the Council together with any other such information that the Council Manager may require such as the nature of and reason for the Works. During the course of any Works the Contractor will be responsible at his expense for the repair of any damage which may occur to such signboards and shall return all signboards to the Council Manager upon completion of any Work Instruction.

The positioning of any such signboard at each Location will be determined by the Council Manager.

- (3) All vehicles used by the Contractor in connection with this Contract may only display his title and logo unless otherwise agreed in writing by the Council Manager. In addition, the Contractor may be required to display on such vehicles a sign indicating that the Works are being carried out on behalf of the Council. Such signs will be provided by the Council Manager, but the Contractor will be responsible for ensuring that they are displayed at all appropriate times. The positioning of such sign on each vehicle shall be agreed by the Council Manager and the Contractor prior to the Commencement Date and wherever a new or different vehicle is used.
- (4) Whilst undertaking any Works included in this Contract, the Contractor shall not canvass or advertise his services to any party, including members of the public, by any means other than those indicated in sub-clauses (2) and (3) of this Special Condition 4.
- (5) The Contractor shall not during the Contract Period provide or seek to provide any technical advice or professional services, or act as a consultant to any party, to whom the Council Manager provides such services, unless he has obtained the prior consent of the Council Manager. Such consent will not be automatically forthcoming and the Council Manager's decision shall be final and binding.

5. ENQUIRIES BY PUBLIC

- (1) Any member of the public or other party making enquiries to the Contractor or any of his employees about any Works, any other aspects of the Contract or like matters shall be politely referred to the Council Manager for a reply. Neither the Contractor or its workforce shall comment publicly upon Council decisions regarding Works or any other aspects of the Contract.

6. TREE PRESERVATION ORDERS AND CONSERVATION AREAS

- (1) Wherever appropriate the Council Manager will liaise with the councils planning departments with regard to Works on trees subject to Tree Preservation Orders or within conservation areas, and provide all relevant information to the Contractor. This will not relieve the

Contractor from his liability to comply with all statutory and other provisions and his obligation to check on the protection status of a tree before undertaking work on it.

7. WILDLIFE AND NATURE CONSERVATION

The Contractor should have regard to the possible implications of disturbing or destroying flora and fauna whilst undertaking the Works and shall ensure that all works are undertaken in full compliance with the law and legal regulations and as amended, including but not limited to:

Wildlife and Countryside Act 1981

Countryside and Rights of Way Act 2000

The Hedgerow Regulations

Forestry Act 1991

Leicestershire Bio Diversity Action Plan

Badgers Act 1992

The Conservation (Natural Habitats, etc) Regulations 1994 (and as amended)

The Contractor shall receive no additional payments from the Council in respect of any extra costs incurred in complying with the legislation and the strategy.

8. NOT USED

9. WORK NEAR THE HIGHWAY

- (1) For the purposes of this Contract the public highway shall include all public roads, footpaths, bridleways and adjoining areas which are adopted by, dedicated to or maintainable by the Highway Authority.
- (2) Before any Works are carried out near the highway or in such a position that they may restrict vehicular or pedestrian traffic or endanger or affect users of the highway in any way, the Council Manager (and if appropriate the Police) must be notified. The minimum sufficient notice required for a lane closure or erection of temporary traffic signals will normally be 14 days but in the event of the Works necessitating the road to be fully closed a period of 8 weeks notice will be required. Where Works are to be undertaken on or adjacent to principal routes the permitted working hours may be restricted at the discretion of the Council Manager.
- (3) The Contractor shall provide, erect and maintain such traffic signs, cones, barriers, lamps or other traffic control equipment (e.g. traffic lights) and adopt other such measures as may be necessitated by the Works adjacent to the highway, in accordance with the

recommendations contained in the latest revision of Chapter 8 of the Traffic Signs Manual published by H.M.S.O. and any amendments thereto. Where the circumstances of any particular case are not covered by the said recommendations the Contractor shall submit proposals for dealing with such situations to the Contractor Administrator for prior approval. Compliance with this sub-clause does not relieve the Contractor of any of his other obligations and liabilities under the Contract and under the relevant provisions of the Highways Act 1980 and the New Roads and Street works Act 1991.

- (4) No traffic signs, cones, barriers, lamps or other traffic control equipment shall be left erected at any Location overnight, at weekends or at any other time when there is no restriction to vehicular or pedestrian traffic, and all such equipment shall be immediately removed from the Location upon completion of the Works. If partially completed work or any other obstruction is left unattended at any time, the Location must be left in a safe condition by the provision of adequate signs, cones, barriers and lamps as necessary.
 - (a) As soon as any temporary access through any highway boundary has been formed by prior approval with the Council Manager, it shall when appropriate, be immediately temporarily fenced and/or gated in such manner as to afford for the duration of the Works the same level of protection as previously existed. Upon completion of the Works, such temporary fence and/or gating shall immediately be removed and the highway boundary reinstated to its former condition to the complete satisfaction of the Council Manager.
- (5) The Contractor and all his employees engaged in work on or adjacent to the highway shall wear high visibility coats to British Standard 6629:1989 at all times.
- (6) In the event of any soil, mud, debris or other droppings being deposited by whatever cause upon any part of the highway which is open to public use due to the performance of the Services then the Contractor shall immediately clean up the same to the complete satisfaction of the Council Manager. Any closed section of the highway shall be cleared of such droppings in like manner by the Contractor before it is re-opened for public use.
- (7) The Council reserves the right for the Council Manager (or the Police) to cancel with immediate effect any authority given to the Contractor to work from any highway in the event of an accident, extraordinary traffic conditions, or in order to facilitate unscheduled repairs to the carriageway or barriers or for any other valid reason.

10. WORK IN RESIDENTIAL AREAS

- (1) When working in residential areas the Contractor shall take due care to ensure that wherever possible any works carried out cause no disturbance to residents. Where this is not possible such disturbance shall be kept to an absolute minimum. The Contractor shall liaise with adjacent residents wherever they are likely to be affected by the works and shall ensure that any materials arising from the works are not deposited or left on private property. Where the Council Manager deems it necessary the contractor will give written notice to adjacent residents no less than 5 days prior to the commencement of any works. Where written notification is required by the Council Manager, the Council will provide the letters which the contractor will deliver by hand or by post at the Contractors expense.

11. SAFETY REQUIREMENTS

- (1) The Contractors operatives and those of any approved sub-contractor shall hold relevant certificates of competence (e.g chainsaw use and maintenance) issued by either the Forestry and Arboriculture Safety and Training Council (FASTCO) or the National Proficiency Test Council (NPTC) or equivalent organisation. Such certificates of competence shall cover all the operations likely to be undertaken in the performance of this Contract.
- (2) The Contractor and his employees shall wear and use appropriate protective and safety clothing and equipment at all times during the course of the Works. All such clothing and equipment shall be provided and maintained by the Contractor at his expense. Any protective and safety clothing and equipment provided by the Contractor during the Contract Period shall comply with the Personal Protective Equipment (EC Directive) Regulations 1992 and EN391 Protective Clothing for Users of Hand Held Chainsaws. Specific items of protective clothing and equipment should display the appropriate 'CE' mark to confirm that it complies with legal requirements current at the time of the work.
- (3) Whilst on any location all employees shall wear rubber soled steel toe cap safety boots or wellingtons with a sole pattern which gives a good grip when on slippery surfaces, subject only to the additional specific requirements for chainsaw operators set out in sub-clause 11(4) below.
- (4) All chainsaw operators including tree climbers shall wear a safety helmet (complying with BS EN 397) and incorporating appropriate ear (complying with BS EN 352) and eye protection (complying with BS EN 166). All other chainsaw related protective clothing should include chain resistant material to provide appropriate all round leg protection (chaps or trousers) and safety boots with protective guarding at the front and instep. Protective trousers and not chaps shall be worn by any tree surgeon operating a chainsaw in a tree.
- (5) All tree climbers shall use such climbing techniques as to ensure that whilst off the ground they are always secured/ roped into the tree and

as a minimum requirement use a sit/half harness with leg straps, a low stretch kernmantle rope (complying with BS EN1891: 1998) and appropriate climbing aids such as Karabiners.

- (6) General guidance on the use of chainsaws in the workplace is given in the Health and Safety Executive's booklet 'Chainsaws at Work' (Ref. INDG317). The Contractor shall also follow any revisions and/or amendments to the guides which are made during the Contract Period.
- (7) Guidance on appropriate safety clothing and equipment and safe working practices is given in the under mentioned Forestry Industry Safety Accord (FISA) Safety Guides and the Contractor shall follow this guidance where it is not overridden by the terms of the Contract. The Contractor shall also follow any revisions and/or amendments to the guides which are made during the Contract Period.

FORESTRY INDUSTRY SAFETY ACCORD SAFETY GUIDES

103 Planting
202 Application of Pesticides
203 Clearing Saw
204 Flails and Mulchers
501 Tractor Units
502 Extraction by Skidder
604 Woodchippers
704 Excavators in Tree Work
705 Steep Slope Working
802 Emergency Planning
804 Electricity
AA 301 Petrol Driven Chainsaws
AA 302 Basic Chainsaw Felling
AA 303 Chainsaw Snedding
AA 304 Chainsaw Cross Cutting
AA 306 Windblown Clearance
AA 307 Felling Large Trees
AA 310 Use of Winches

12. RISK ASSESSMENT

- (1) The Contractor shall produce a written risk assessment for each work activity included in the Contract. Separate risk assessments, shall be required for each specific operation included in a particular work activity. Copies of all risk assessments shall be forwarded to, and approved by, the Council Manager prior to the Commencement Date if required.
- (2) Prior to the commencement of work the Contractor shall carry out a visual risk assessment of each work Location included in the Contract and record his findings on a pro forma which shall be provided by the Council Manager. The completed pro forma shall be returned to the

Council Manager with copies of completed Work Instructions if required.

13. USE OF PESTICIDES

All pesticides used in the contract shall be in accordance with the Council's Pesticides Policy, and additionally the following requirements:-

- (1) In this Contract the term "pesticides" encompasses products such as herbicides, fungicides and insecticides, and only those pesticides approved under the Control of Pesticides Regulations 1986 shall be used by the Contractor and the Council reserves the right for the Council Manager to substitute an alternative product if approval of the pesticide proposed to be used by the Contractor is revoked. The Contractor shall clarify with the Council Manager prior to use that any such specified pesticide which he proposes to use has not had its approval revoked and is suitable for a particular operation. No compensation shall be payable to the Contractor in any case of such revocation.
- (2) The Contractor shall give the Council Manager a minimum of 24 hours notice of his intention to apply any approved pesticide (except in the case of routine cut stump treatments). The Contractor shall only proceed with the application on the day if the weather and Location conditions are suitable in every respect and show every indication of remaining so for the period necessary for proper application to be completed, and in the case of foliar acting herbicides for at least the period required after application for the particular pesticide to be fully absorbed. The Council Manager reserves the right to postpone, suspend or cancel the Works at any time should he consider that conditions are unsuitable or that the application is not being carried out in a proper manner, and his decision shall be final and binding and no compensation will be payable to the Contractor for time lost under these circumstances.
- (3) The Contractor shall fully comply with the manufacturer's instructions in all respects regarding the use of any pesticide.
- (4) The Contractor shall ensure that he and all his employees involved with the application of pesticides are supplied with and wear at all times suitable protective clothing complying with the recommendations for the pesticide being handled.
- (5) The Contractor and all his employees involved in the storage, transport or application of any pesticide shall be fully trained and hold the Foundation Module (PA1) National Proficiency test in pesticide application and in addition the Contractor and all those of his employees applying pesticides shall also hold the relevant application method module National Proficiency test (PA6 Hand Held Applicator or other Test approved by the Council Manager).

- (6) Should the use or application of any pesticide result in any damage whatsoever to any turf, plants, trees or soil other than those intended specifically to be controlled by the product or to any other flora or fauna within or outside the area to be treated then the Contractor shall be held fully liable and shall fully indemnify the Council accordingly.

In respect of any such damage at any Location or adjoining property the Contractor shall fully reinstate any damaged turf, trees, shrubs, plants, soil or the like entirely at his own expense and to the complete satisfaction of the Council Manager, and in respect of all such other damage shall either fully make good as appropriate or practicable, or pay appropriate compensation in lieu to the complete satisfaction of the Council Manager.

- (7) Water used for the dilution of any pesticide shall always be obtained from the mains supply.
- (8) The Contractor shall ensure that the application of pesticides is carried out using equipment properly designed and manufactured for the purpose and that all such equipment is properly maintained and in good working order.
- (9) Pesticides shall not be stored at any Location but shall be brought onto any Location only as and when required. Used or partly used pesticides or containers shall be removed from the Location immediately after use. Pesticide containers shall be kept locked in a secure locker or vehicle compartment at any time that they are left unattended during the working day at any Location.
- (10) Spray tanks and containers shall not be rinsed out or left at any Location.
- (11) The Contractor must ensure that he is aware of his obligations in respect of the safe use, handling, storage and disposal of pesticides under all relevant regulations, and acts of law-

Or any future Acts that replace or compliment the above

- (12) The Contractor shall keep accurate written records of all pesticide applications at each Location in a form to be approved before any pesticide applications commence under the Contract by the Council Manager to whom copies in respect of those Locations where such applications have been made shall be supplied on a weekly basis by the Wednesday of the following week.

14. WORK IN PUBLIC PLACES

- (1) Where Works are to be undertaken at Locations to which the public, school children, the elderly, disabled persons, site staff or other parties have access the Contractor shall take every precaution to ensure their safety. This will include providing sufficient staff to restrict or redirect the public and erecting appropriate signs, cones, barriers and the like as necessary, in order to exclude members of the public and other parties from the work site. The Contractor shall take all due care to ensure the safety of such people and where the works are of a potentially hazardous nature, the site authorities shall be alerted to the situation.
- (2) In the case of tree surgery or tree felling Works the full and adequate number of "Road Works" warning signs (in accordance with Chapter 8 of the Traffic Signs Manual) complete with supplementary plates bearing the words "Tree Cutting" (Fig. 8:40 of the said Chapter 8) and of a size appropriate to the size of the warning plate (as detailed in Table A of the said Chapter 8) shall be displayed around the area of Works in accordance with current regulations and the requirements of the Council Manager.
- (3) If the Contractor leaves any wood, debris, open holes or other potential hazards unattended at any Location, he shall be fully responsible for ensuring that they are left tidy and in a safe and secure condition. The Contractor shall not leave any Plant unattended on any Location without the prior consent of the Council Manager in which case it will be left in a safe condition with adequate warning signs, lamps, cones and the like provided to safeguard the public and in accordance with any other reasonable requirements of the Council Manager.
- (4) Where there are known to be children or elderly, people with disabilities or mentally frail at, adjacent to or passing by a Location, the Contractor shall take any additional measures necessary to ensure their safety.

15. WORK NEAR RIVERS STREAMS AND OTHER WATERCOURSES

- (1) The Contractor shall not leave any timber, brash or other debris or arisings resulting from any Works in or across any river, stream or watercourse. Any such item shall be removed from the river, stream or watercourse and then be completely removed from the Location in accordance with condition 19 of the Special Conditions.

16. EXPLOSIVES

- (1) The Contractor shall not use any explosives unless their use has been specifically approved in writing by the Council Manager and the local Police. If explosives are used the Contractor is to be liable in respect

of all and any risks arising from their use and for the safeguarding of the public, the Location, and the Council's and any adjoining property.

17. FIRES

- (1) The Contractor shall not light any fire at any Location without the prior consent of the Council Manager whose consent will not normally be given. Where such consent is given fires shall be lit without the use of rubber tyres, only in the sites specifically approved for that purpose and whilst the Contractor shall take all reasonable precautions to prevent loss or damage from such fires he shall be liable in respect of all risks, actions, claims and damages arising therefrom. No fire shall be left burning unattended and the ground at the site of the fire shall be reinstated to the satisfaction of the Council Manager on completion of the Works.

18. ANIMALS, CHILDREN, AND UNAUTHORISED PERSONS

- (1) The Contractor shall not bring any animals or children onto any Location at any time and in addition no unauthorised persons shall be allowed on any Location whilst work is in progress, under any circumstances.

19. DISPOSAL OF ARISING

- (1) The Contractor shall unless otherwise specified, directed or agreed by the Council Manager be responsible for the removal and disposal on a daily basis of all wood, brash, other debris or arising resulting from, through or because of, Works at any Location. The only exception will be felled tree trunks which the Council Manager specifically agrees may be left, provided that they can be positioned and appropriately protected and made safe so as not to cause a hazard and that they are removed within seven days of being felled unless otherwise further agreed by the Council Manager. Such removal and disposal must be carried out safely and the movement and disposal of any timber and wood must comply with all relevant legislation which is in force at the time of the work being carried out. Any tipping fees or other charges or costs incurred in the removal or disposal of any arisings shall be met by the Contractor at his expense.

With regard to any materials removed from the location, which the Council Manager considers to be re-usable, such as wood-chips or timber suitable for fire wood or charcoal production, the Contractor shall transport and store such materials at a point agreed by the Council Manager and shall be deemed to have made the necessary allowances in the tendered rates. Any such materials will be deemed to be the property of the Council.

20. LOCATION OF UNDERGROUND SERVICES (UTILITIES)

- (1) Whilst the Council Manager will make reasonable effort to provide the Contractor with details of the position of underground services, no responsibility can be accepted for the accuracy of this information and the Contractor shall consult and liaise with the appropriate statutory undertakers or suppliers as may be required prior to work commencing at any Location in order to fully acquaint himself with the location of such services. The Contractor shall be responsible for fulfilling any requirements which may be made by the statutory undertakers or suppliers in relation to the Works or the Location. With regard to overhead services the Contractor shall be fully responsible for any damage which occurs as a result of the Works and shall plan and execute the Works in such a manner as to minimise the risk of such damage occurring.
- (2) The Contractor shall be liable for any damage which occurs to overhead or underground services as a result of the Works and shall indemnify the employer against any claims made as a result of such damage.

21. WELFARE FACILITIES

- (1) The Contractor shall be responsible at his own expense for providing any necessary shelter, toilet, washing, messing and other welfare facilities for his employees at any Location.
- (2) Such facilities shall not be left at any Location overnight without the prior written approval of the Council Manager, which will not normally be given.
- (3) Under no circumstance will any caravan or other overnight accommodation be permitted on any Location.

22. DISPOSAL OF DISEASED/INFECTED MATERIAL AND SANITATION OF TOOLS

- (1) The Contractor shall agree special arrangements with the Council Manager prior to the disposal of infected plant material on each occasion as necessary. Such arrangements shall include the basis on which the Contractor is to be reimbursed for any costs which are additional to the relevant rate in the Pricing Schedule for the disposal of clean plant material or other arisings for the particular item of Works.
- (2) The Contractor shall ensure that all cutting and inspection tools shall be surface sterilised with an appropriate sterilant as defined by the Arboricultural Association or The Forestry Commissions of the Institute of Chartered Foresters after being used on trees, shrubs or other plants which are known to be or suspected of being diseased.

23. CLEARANCE OF LOCATIONS ON COMPLETION

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- (1) Upon completion of the Works at each Location the Contractor shall clear away and remove from the Location all plant, surplus materials, rubbish, timber, brash, chippings and other wood residues, and temporary works of any kind and leave the whole Location clean tidy and in a workmanlike condition to the complete satisfaction of the Council Manager.

24. VARIATION TO ANNUAL VALUE OF SERVICES AND DIVISION OF WORKS

- (1) The estimate of the annual value of Services specified within the Contract and the division of work between specific disciplines may vary depending on the demands and needs of the service.

25. PRICING SCHEDULE

The rates and prices to be included in the Pricing Schedule are deemed to be the full inclusive cost of carrying out the relevant individual task.

26. MATERIALS

- (1) Prime Cost Items

The Contractor may be required to provide a range of Materials for the purpose of the Contract. Where the provision of such Materials is not an integral and essential part of the operation, is not specified and/or is not provided for in the Pricing Schedule payment shall be made to the Contractor for providing such items based on current market or invoice rates net of all discounts and the like delivered to Locations or Contractor's store with the addition of a percentage to cover all overheads, profits and all other such liabilities. The relevant percentages are to be shown by the Contractor in the Pricing Schedule.

27. REINSTATEMENT OF DAMAGE

Where damage occurs to surrounding ground surfaces and other features, the Contractor will be responsible for the repair and reinstatement of such damage and will be deemed to have made the necessary allowances in his tendered rates. The reinstatement work shall be carried out in accordance with the following requirements:-

- (1) Making Good Damage to Existing Grassland
 - (a) Lightly damaged areas shall be cultivated only when ground conditions are suitable to a minimum depth of 150mm to form a fine tilth. Any stones in excess of 30mm diameter shall be collected up and removed from the Location and the areas shall be graded to marry in with the surrounding grassland. An approved grass seed mixture shall be sown

at the rate of 25-30 gms per square metre. After sowing the seed shall be raked and rolled into the cultivated surface.

- (b) Where rutting has occurred the rutted surface shall be initially cultivated. Any remaining differences in level shall be made good using good quality imported topsoil approved by the Council Manager. Such areas shall then be cultivated, graded, sown and raked/rolled as specified in Special condition 27(1).
 - (c) During periods of dry weather newly seeded areas shall be watered as necessary until satisfactorily established.
 - (d) Grass Seed Mix – as approved by the Council Manager
- (2) Damage to Roads, Pavements and Other Hard Surfaced Areas
- (a) Where any such area is cracked, rutted or otherwise damaged it shall be signed and coned off in accordance with Special Conditions 9 and 14 and the Council Manager immediately informed of the damage. The Council reserves the right for the Council Manager to instruct either the Contractor or, at his discretion, another appropriate organisation to reinstate any such damage at the Contractor's expense to the satisfaction of the Council Manager.

(3) Other Damage

All other types of damage shall be reinstated in a manner and standard appropriate to the nature of the damage which has occurred. Where the Contractor is in any doubt as to the necessary standard of such reinstatement he shall consult with the Council Manager prior to commencing any reinstatement works in accordance with such instructions and requirements as may be given by the Council Manager.